Link to Final Agency Decision
OAH Docket No. 3-1800-16209-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Rate Appeal of
Bridges Medical Center

RECOMMENDATION ON CROSS MOTIONS FOR SUMMARY DISPOSITION

This matter is before Administrative Law Judge Kathleen D. Sheehy on the parties' Cross Motions for Summary Disposition. The record with respect to the motions closed on June 23, 2006, with receipt of the final reply brief.

Barry R. Greller, Assistant Attorney General, 445 Minnesota Street, Suite 900, St. Paul, MN 55101-2127, represented the Minnesota Department of Human Services (Department or DHS). Joel H. Jensen, Attorney at Law, 5353 Gamble Drive, Suite 125, Minneapolis, MN 55416, represented Bridges Medical Center (Bridges).

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Recommendation for Summary Disposition that follows. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact the Commissioner of the Minnesota Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

Based on all the files, records and proceedings herein, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that**:**

1. The Department's Motion for Summary Disposition be **GRANTED**.

2. Bridges' Motion for Summary Disposition be **DENIED**.

3. The Commissioner **AFFIRM** the Department's calculations of the property and equity incentive reimbursement rates and of the operating payment rates for Bridges Medical Center.

Dated this 24th day of July 2006.

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

MEMORANDUM

This rate appeal concerns the proper method of calculating the property and equity incentive reimbursement rates for Bridges' newly constructed nursing home facility in Ada, Minnesota, as well as the limitations applied by DHS to Bridges' operating rates for the two initial rate periods following completion of the facility. Bridges timely requested this contested case proceeding, following the denial by DHS of its administrative appeal of prior rate notices issued to Bridges.[1]

The parties have stipulated to the material facts in this matter and both have moved for summary disposition.

Motion Standard

Summary disposition is the administrative equivalent of summary judgment.[2] Summary disposition is appropriate when there is no genuine dispute about the material facts, and one party must necessarily prevail when the law is applied to those undisputed facts.[3] A genuine issue is one that is not a sham or frivolous. A material fact is a fact whose resolution will affect the result or outcome of the case.[4] Because the parties agree there are no issues of material fact to be contested in this matter, this Recommendation is based on an analysis of the applicable rules and law. With respect

to each Cross Motion under review, the nonmoving party has the benefit of the most favorable view of the evidence. All doubts and inferences must be resolved against the moving party.[5]

Summary of the Facts

Bridges Medical Center (Bridges) is a medical facility owned and operated by the City of Ada, doing business as Bridges Medical Services.[6] Bridges operates a nursing home, hospital and clinic. In April 1997, the former Bridges facility was destroyed by flooding.[7] Following its destruction, the 1997 Legislature enacted Minnesota Statute § 144A.071, subd. 4a(w), which authorized the licensing and certification of "a total replacement project of up to 49 beds located in Norman County that are relocated from a nursing home destroyed by flood and whose residents were relocated to other nursing homes."[8] The statute also provided for the payment of the new facility's operating cost payment rates and property-related reimbursement rates.[9]

The City of Ada completed construction of the new Bridges Medical Center in May 2000. The new facility was comprised of a 49 bed nursing facility, a 14 bed hospital and a clinic.[10] The total cost of constructing the new facility was $19,433,274.[11]

To finance construction of the new facility, the City of Ada issued approximately $4,000,000 in Temporary Gross Revenue Grant Anticipation Bonds to cover short term financing; obtained a grant through the Federal Emergency Management Agency ("FEMA grant"); and obtained a loan from the State of Minnesota ("Health Department loan"). The City of Ada received revenue of $20,357,079 from the FEMA grant and $2,090,864 from the Health Department loan.[12] The annual payments on the Health Department loan were forgiven according to its terms in the initial years, and the entire balance was subsequently forgiven by an act of the legislature forgiving all such loans.[13]

In March 2000, prior to completion of construction, representatives of Bridges met with representatives of DHS to discuss the establishment of an interim payment rate for the initial operation of the nursing home portion of Bridges.[14] By letter dated March 20, 2000, Bridges' accountant summarized the issues discussed at that meeting and reminded DHS that the facility would "probably not have debt due to the fact that they have received grants to rebuild the facility that was destroyed by flood."[15]

By letter dated March 27, 2000, DHS Audit Manager, Greg TaBelle, informed Bridges' accountant that the settle-up rate would be limited "by a hybrid of limits based on the number of days in the July 1, 1999, rate year, the number of days in the July 1, 2000, rate year, and the number of days in the July 1, 2001, rate year."[16]

By document dated July 28, 2000, DHS provided Bridges with its interim rate calculation.[17] As agreed by Bridges and DHS, the interim operating rates were set at 110% of the estimated limits for hospital attached nursing facilities (then being used in determining nursing facilities' efficiency incentive payments) in the same geographical group, due to the difficulty in estimating operating costs and anticipated census and case mix levels for the newly re-opened facility, as would otherwise be called for in

Minnesota Rules part 9549.0057, subpart 2.[18] DHS did not consider the public grants Bridges received in its calculation of its interim rates.[19]

Bridges filed a cost report for the interim period which began June 7, 2000 and ended September 30, 2001. The costs for the interim period were used to establish the settleup rate for the period from June 7, 2000 through September 30, 2001, the 9-month after settleup rate for the period October 1, 2001 through June 30, 2002, and the prospective payment rates for the rate year beginning July 1, 2002.[20]

By letter dated May 23, 2002 and mailed June 4, 2002, DHS notified Bridges of its "rates based on the settle-up cost report, Minnesota Rules 9549.0010 to 9549.0080, and Minnesota Statutes 144A.071 and 256B.431." This notice contained final rates for the reporting periods beginning June 7, 2000 through September 30, 2001, October 1, 2001 through June 30, 2002, and estimated rates for the rate year beginning July 1, 2002.[21] In this letter, DHS also informed Bridges that its "allowable new asset costs and debt are zero because the building was entirely paid by FEMA grants and the State of Minnesota Funds, which are public grants and, therefore, applicable credits."[22]

In calculating final operating rates for Bridges' settleup rate period beginning June 7, 2000, and for the nine months after the settleup rate period beginning October 1, 2001, DHS applied both the "care related limit" and the "other operating limit" increased by 10 percent, pursuant to Minnesota Rules 9549.0057, subpart 3(B)(5).[23] In calculating Bridges' final operating rates for the rate year beginning July 1, 2002, and all subsequent years, DHS did not apply the "care related limit" or "other operating limit."[24]

In calculating Bridges' final property related reimbursement rate for applicable rate periods, DHS did not count as allowable costs any of the actual costs of construction of the new nursing facility because these construction costs were paid for entirely from the proceeds of a FEMA Grant and from a Minnesota Health Department Loan, the repayment of which was forgiven.[25] Likewise, in calculating the final equity incentive of the Bridges rate for applicable periods, DHS did not count as allowable costs any of the actual costs of construction of the new nursing facility.

Analysis

Bridges disputes the property and equity incentive reimbursement rates set by DHS in connection with the operation of its new nursing facility, as well as the limitations applied by DHS to Bridges' operating rates for the two initial rate periods following completion of the facility. The Administrative Law Judge will consider each rate calculation below.

1. Property Rate Calculation

Both parties agree that the general rule governing nursing home reimbursement rates is that any funds used to purchase capital assets that are derived from public grants are to be offset against any costs for which property-related reimbursement is claimed.[26] Under Rule 50,[27] public grants are treated as "applicable credits" and their

proceeds are used to reduce the amount of costs subject to reimbursement. Loans, on the other hand, are normally treated as allowable debt.

Minnesota Statute § 144A.071, subd. 4a(w), which was enacted to permit construction of the Bridges replacement facility, expressly requires that the property-related reimbursement rates of the new facility be determined by "*taking into account* any federal or state flood-related loans or grants provided to the facility." DHS argues that the simple meaning of this statute is that any loans or grants received by Bridges must be considered in the rate calculations.

When an existing nursing facility is totally replaced by a new facility, Minn. Stat. § 256B.431, subd. 17d(a) requires that DHS use the new facility's "allowable capital asset costs" in computing its property-related rate. The statute requires DHS to determine both the new facility's "allowable capital asset costs" and the related allowable "capital debt and interest costs." In performing the reimbursement calculation, Minn. Stat. § 256B.431, subd. 18(b) requires that the nursing facility's appraised value "be reduced by the historical cost of capital asset disposals or *applicable credits such as public grants and insurance proceeds*." (Emphasis added.) Minnesota Rule 9549.0020, subp. 4, defines the term "applicable credits," for the purpose of Rule 50 rate calculations, to include public grants, insurance proceeds, or any other adjustment or income reducing the costs claimed by a nursing facility.

Minnesota Rule 9549.0035, subp. 2, further specifies that: "Applicable credits must be used to offset or reduce the expenses of the nursing facility to the extent that the cost to which the credits apply was claimed as a nursing facility cost." Thus, under the rate-setting provisions of Minnesota Rules 9549.0020, subp. 4, 9549.0035, subp. 2, and Minnesota Statutes § 256B.431, subd. 18(b), applicable credits, such as insurance proceeds and public grants, must be offset against costs incurred.

In calculating the property reimbursement rate for the new Bridges facility, DHS applied these provisions and disallowed as applicable credits Bridges' construction costs because they were paid for entirely by public grants and loans that were forgiven. This resulted in allowable asset costs of zero. DHS maintains that it was proper to treat the forgiven loans as applicable credits rather than allowable debt because once forgiven, the loans were essentially transformed into public grants or gifts of funds.

Bridges argues, however, that Minn. Stat. § 144A.071, subd. 4a, creates an exception to the generally applicable nursing home rate setting rule that applicable credits, such as public grants and insurance proceeds, be used to reduce the facility's allowable property related costs. Bridges contends that the intent of the statutory language in Minn. Stat. § 144A.071, subd. 4a(w), regarding "*taking into account*" grants and loans, is to require DHS to allow and reimburse Bridges for the capital costs that were paid for with public funds (grants and forgiven loans). That is, Bridges maintains that the phrase "*taking into account*" means that DHS should count both grants and loans as reimbursable costs. Bridges asserts that counting and allowing project costs incurred, even though financed through the proceeds of federal and state flood-related grants and loans, would recognize the costs of preserving the property and provide adequate resources to keep the facility updated.

Bridges also argues that its interpretation that Minn. Stat. § 144A.071, subd. 4a(w), provides an exception to the general rule that public grants must be offset against costs incurred, is supported by DHS' own calculation of Bridges interim rates in 2000. Bridges points out that in a letter dated March 20, 2000, its accountants informed DHS that the facility would probably have no debt because it had received grants to rebuild the facility. Despite being so informed, DHS made no reference to the grants and described the construction as having been done "mainly with insurance proceeds" in its subsequent interim rate calculation. Bridges maintains that the fact that DHS knew the nature of its financing and did not offset the grants in its calculation of its interim rates demonstrates that DHS also interpreted Minn. Stat. § 144A.07, subd. 4a(w), as providing an exception to the general rule disallowing rate reimbursement for assets purchased with public grant funds.

DHS maintains that at best, the correspondence exchanged between it and Bridges demonstrates that DHS either overlooked or was confused about the sources of Bridges' reconstruction funding until it was time to issue its settle-up rates. DHS points out, for example, that although Bridges informed it in March of 2000 that it had "received grants" it did not specify that they were "public" grants, which is significant since private grants are not treated as applicable credits under Rule 50. Regardless, DHS asserts that even if Bridges could establish that its calculation of the interim rates amounted to an interpretation that section 144A.07, subd. 4a(w), permitted public grants not to be treated as applicable credits, errors made by DHS in the rate-setting process are not binding administrative interpretations of the law.[28]

The Administrative Law Judge concludes that Bridges' argument that the statutory language "*taking into account*" flood-related loans or grants requires DHS to treat both grants and loans as reimbursable costs is contrary to existing law and not supported by the plain meaning of the statute. The plain meaning of the phrase "taking into account," is to take into consideration or allow for.[29] In the context of the Rule 50 rate setting scheme, the phrase means simply that DHS must consider any loans or grants when calculating property rates. It does not mean, as Bridges' suggests, that DHS is required to treat both loans and grants as reimbursable costs. Moreover, to accept Bridges' reading of the statute would mean that the Legislature intended to give away public funds twice – first by providing full payment for the reconstruction of the destroyed facility, and second by paying a property reimbursement rate measured by the amount of public funds gifted for the reconstruction. Such a reading would violate the statutory presumption that the Legislature does not intend a result that is absurd or unreasonable.[30]

The Administrative Law Judge concludes that DHS correctly determined that, in calculating the property rate for the new nursing facility, Bridges' construction costs must be reduced by the amount of federal grants and state loans that were forgiven. At best, Bridges has demonstrated that DHS issued its interim rates in error. DHS was not bound to perpetuate that error, however, when issuing the settle-up rates. DHS' motion for summary disposition on this issue is granted.

2. Equity Incentive Payment Rate

Bridges also disputes the determination by DHS of its equity incentive rate. In calculating the equity incentive payment rate for the reconstructed nursing facility, DHS again reduced Bridges' construction costs by the amount of federal grants and forgiven state loans it received to pay for the reconstruction, setting the equity incentive rate at zero.

Minn. Stat. § 256B.431, subd. 16, provides as follows:

> For rate years beginning after June 30, 1993, if a nursing facility acquires capital assets in connection with a project approved under the moratorium exception process in section 144A.073 or in connection with an addition to or replacement of buildings, attached fixtures, or land improvements for which the total historical cost of those capital asset additions exceed the lesser of $150,000 or ten percent of the most recent appraised value, the nursing facility shall be eligible for an equity incentive payment rate as in paragraph (a) to (d). This computation is separate from the determination of the nursing facility's rental rate. An equity incentive payment rate as computed under this subdivision is limited to one in a 12-month period.

This provision adds an "equity incentive" to nursing home's reimbursement rate when capital assets are acquired without debt or with debt that is less than the allowable cost of the asset. This add-on rate is meant to provide an incentive to the facility to purchase new capital assets with existing resources.

Bridges argues that the amount of publicly gifted funds it received (federal grants and forgiven state loans) should be included in this rate computation and not treated as credits and offset against the costs. As with the property related rate calculation discussed above, Bridges maintains that the legislature intended that these funds be allowed for the equity incentive calculation.

The Administrative Law Judge concludes that the disallowance of the federal grants and forgiven state loans when calculating the equity incentive rate was proper. Because the "allowable historical cost" of capital assets purchased for the reconstructed nursing facility must be determined under Rule 50, DHS was required to offset the publicly gifted funds in computing the applicable rate calculation.[31] The Department's motion for summary disposition with respect to this issue is granted.

3. Operating Payment Rate

The last issue to be considered is whether DHS properly applied the operating rate limits established by Minnesota Rules part 9549.0055 to the operating payment rates for Bridges settle-up period (June 7, 2000 – September 30, 2001) and for the nine month period following the settle-up period.

Minn. Stat. § 256B.431, subd. 27 provides as follows:

> (h) The nursing facility reimbursement changes in paragraph (i) and (j) shall apply in the sequence specified in this section and Minnesota Rules, parts 9549.0010 to 9549.0080, beginning July 1, 1998.

> (i) For rate years beginning on or after July 1, 1998, the operating cost limits established in subdivisions 2, 2b, 2i, 3c, and 22, paragraph (d), and any previously effective corresponding limits in law or rule shall not apply, except that these cost limits shall still be calculated for purposes of determining efficiency incentive per diems. For rate years beginning on or after July 1, 1998, the total operating cost payment rates for a nursing facility shall be the greater of the total operating cost payment rates determined under this section or the total operating cost payment rates in effect on June 30, 1998, subject to rate adjustments due to field audit or rate appeal resolution.

Operating rates for newly established facilities, including replacement facilities, are set by a process established in Minnesota Rules 9549.0057. The rule provides for an interim payment rate based upon estimated costs and a settleup of those rates using actual costs, once they have been determined and reported by a facility. Based on the provider's reporting of its actual costs, three different rates are set under part 9549.0057: (1) a "settleup rate" for the initial period; (2) a "nine month after settleup rate" to bring the provider into its first July 1 rate year; and (3) a prospective July 1st rate. Rate years begin on July 1st and the rate established for the rate year is prospective based on historical cost reporting. Bridges' first rate year did not begin until after the initial start-up rate periods. Bridges received a single rate determination for the "reporting period" from June 7, 2000 to September 30, 2001.[32] It received a second rate determination for the 9-month period from October 1, 2001 to June 30, 2002.[33] It did not receive new rates effective for "years" beginning on either July 1, 2000 or July 1, 2001. Instead, Bridges' first actual "rate year" began July 1, 2002, and in calculating Bridges' final operating rates for the rate year beginning July 1, 2002, and all subsequent years, DHS did not apply the "care related limit" or "other operating limit."[34]

DHS argues that the elimination of the operating cost limits provided for at Section 256B.431, subd. 27(i), applies only to a facility's "rate years" beginning on or after July 1, 1998, and not to the start-up reimbursement periods at issue here.

Bridges maintains that DHS improperly applied the operating cost limits to its settleup and nine month after settleup periods when the plain wording of Minn. Stat. § 256.431, subd. 27(h) and (i) requires that these limits be removed. Bridges contends that the law removing the limits makes no exception for interim rates under Minnesota Rule 9549.0057. In addition, in response to the Department's argument that this provision applies only to a facility's "rate years" and not to start-up reimbursement periods, Bridges points out that in the Department's letter to Bridges dated March 27, 2000, it stated that the "settle-up rate will be limited by a hybrid of the limits based on the number of days in the July 1, 1999, rate year, the number of days in the July 1, 2000, rate year, and the number of days in the July 1, 2001, rate year."[35] Thus, Bridges asserts that DHS' application of the term "rate year" to identify Bridges' settle-up rate periods supports its position that the operating limits do not apply.

DHS maintains that its March 27, 2000 letter to Bridges' accountant is not inconsistent with its position. According to DHS, that letter references the limits

applicable generally to nursing home rate years. It was not referring to Bridges' specific interim rate periods.

The elimination of operating cost limits provided for at Minn. Stat. § 256B.431, subd. 27(i) applies only to "rate years beginning on or after July 1, 1998." "Rate year" is defined to mean "the state of Minnesota's fiscal year for which a payment rate is effective, from July 1 through the following June 30."[36] Bridges' start-up reimbursement periods do not meet the definition of a "rate year." Because neither of the disputed start-up periods under part 9540.0057 meets this definition of a "rate year," the operating cost limits continue to apply to these start-up periods. The Department is entitled to summary disposition on this issue.

There are no genuine issues of material fact in this case. The Respondent has not demonstrated that the Department erred in calculating the various rates at issue. Instead, DHS has shown that it followed the statutory procedure in calculating those rates. Therefore, the Administrative Law Judge recommends that the summary disposition motion of the Department be granted and the Respondent's motion be denied.

K.D.S.

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[1] Stipulation of Facts, dated May 10, 2006 at ¶ 4.
[2] *Pietsch v. Mn. Bd. of Chiropractic Examiners*, 683 N.W.2d 303, 306 (Minn. 2004); Minn. R. 1400.5500(K).
[3] *Sauter v. Sauter,* 70 N.W. 2d 351, 353 (Minn. 1955); *Louwagie v. Witco Chemical Corp.*, 378 N.W.2d 63, 66 (Minn. App. 1985); Minn. R. Civ. P. 56.03.
[4] *Illinois Farmers Insurance Co. v. Tapemark Co.*, 273 N.W.2d 630, 634 (Minn. 1978); *Highland Chateau v. Minnesota Department of Public Welfare*, 356 N.W.2d 804, 808 (Minn. App. 1984).
[5] *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988); *Greaton v. Enich*, 185 N.W.2d 876, 878 (Minn. 1971); *Dollander v. Rochester State Hospital*, 362 N.W.2d 386, 389 (Minn. App. 1985).
[6] Stipulation at ¶ 5.
[7] Stipulation at ¶ 5.
[8] Stipulation at ¶ 6.
[9] Stipulation at ¶ 6; See Minn. Stat. § 144A.071, subd. 4a(w).
[10] Stipulation at ¶ 8.
[11] Stipulation at ¶ 10.
[12] Stipulation at ¶ 9; Ex. 3A and 3B.
[13] Stipulation at ¶ 11. See Minn. Stat. § 144.148, subd. 9.
[14] Stipulation at ¶ 12.
[15] Stipulation Ex. 4.
[16] Stipulation Ex. 5.
[17] Stipulation at ¶ 16, Ex. 7.
[18] Stipulation at ¶ 17.
[19] Stipulation Exs. 5 and 7.
[20] Stipulation at ¶ 18.
[21] Stipulation at ¶ 19, Ex. 7A.
[22] Stipulation Ex. 7A.
[23] Stipulation at ¶ 24.
[24] Stipulation at ¶ 25.
[25] Stipulation at ¶ 9, 11, 30.
[26] See Bridges Memorandum at 5.

[27] The system for determining reimbursement rates is set forth in Minn. Stat. § 256B.431 and Minn. Rule ch. 9549 (collectively known as "Rule 50"). See Minn. Rule 9549.0020, subp. 4, defining "applicable credits" and Minn. Rule 9549.0035, subp. 2, which requires that applicable credits be used to offset costs.
[28] See *In re Mary T. Associates, Inc. v. Minnesota Dep't of Human Services*, No. C6-93-861, 1993 WL 412994 (Minn. App. October 8, 1993) (unpublished) ("auditor error or oversight in prior reporting periods does not change specific rule requirements nor does it entitle the relator to a perpetuation of the error.")
[29] American Heritage College Dictionary 9 (3rd ed. 1993).
[30] Minn. Stat. § 645.17(1).
[31] See *In re Mankato Lutheran Home*, OAH File No. 9-1800-9041-2, (Order dated Aug. 10, 1995) ("The Legislative intent is to use the limitations in Rule 50 to establish the proper starting point for the equity incentive rate.")
[32] Stipulation at ¶ 18, Ex. 7A, Attach. at 1-2.
[33] Stipulation at ¶ 18, Ex. 7A.
[34] Stipulation at ¶ 25.
[35] Ex. 5.
[36] Minnesota Rule 9549.0020, subp. 36.